



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
)
GEORGE M. AND GEORGIA M. WEBSTER)

Appearances:

For Appellants: George M. Webster, in pro. per.

For Respondent: Brian W. Toman
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of George M. and Georgia M. Webster against proposed assessments of additional personal income tax in the amounts of \$755.13, \$586.26, **\$2,200.00** and **\$2,152.00** for the

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years 1970, 1971, 1972 and 1973. Subsequent to the filing of this appeal, appellants made a payment of \$1,800.00 and designated that it be credited to interest which had accrued on the deficiency assessments.

The issue is whether appellants were residents of **California** during the years under appeal.

George M. Webster, hereinafter referred to as appellant, was born and raised in Kansas and says that he has always intended to return there some day. He owns substantial amounts of real property in that state, including a cemetery plot, and maintains bank accounts and safe deposit boxes there. He also employs a lawyer and insurance advisor in Kansas.

From 1957 until his retirement on March 31, 1973, appellant was employed in California by the federal government. Because of this job he spent most of his time in this **state** during the appeal years. Except for brief business trips connected with his employment, appellant was in **California** a total of 272 days in 1970, 292 days in 1971, 294 days in 1972, and 235 days in 1973. Appellant's wife spent substantially all of her time in this state. The couple owned a home in Los Angeles for **which** they claimed the homeowners' property tax **exemption**, and they also owned three automobiles registered in this state. In addition they maintained bank accounts here, and they each held a valid California driver's license.

Appellant had an agreement with his brother and sister, who apparently lived in Kansas, that he would act as executor of their estates if he should survive them. Appellant had been advised by an attorney that, under Kansas law, executors and conservators of the estates of Kansas residents had to be residents of that state. Appellant therefore carefully planned his affairs so that he would retain his Kansas residency. He always paid Kansas income taxes as a resident, and he always voted in that state and never voted elsewhere. Appellant did in fact act as executor of his brother's estate in Kansas from 1969 to 1972, and as conservator of his sister's estate from 1972 or 1973 until the present.

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For each of the sixteen years appellant **was** employed in this state, including the appeal years, he and his **wife** filed nonresident California income tax returns. Respondent examined the returns for the years in question and determined that appellant and his wife were residents of California. It thereupon issued the proposed assessments which led to this appesi.

Section 17014 of the Revenue and Taxation Code, as it read during the years at issue, defined the term "resident" to include:

(a) Every individual who is in this State for other than a temporary or transitory purpose.

(b) Every individual domiciled in this State who is outside the State for a temporary or transitory purpose.

Any individual who is a resident of this Stat: continues to be a resident even though temporarily absent from the State.

Appellant contends that he was continuously domiciled in Kansas because he always intended to return there **some** day. Respondent chooses not to argue this point, out instead focuses its attention on former subdivision (a) of section 17014. Its position is that appellant was a resident of California during the appeal years because his presences here were for other than temporary or transitory purposes, regardless of whether or not his domicile was in Kansas. For the reasons expressed below, we agree with respondent.

Respondent's regulations, in discussing the phrase "**temporary** or transitory purpose," state that:

If...an individual is in this State...for business purposes which will require a long or indefinite period to accomplish, or is employed in a position that may last permanently or indefinitely... **he** is in the State for other than temporary or transitory purposes, and, accordingly, is a resident taxable upon his entire net income even though he may retain his domicile in some other state or country. (Cal. Admin. Code, tit. 18, reg. 17014-17016(b).)

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The regulations also provide that the underlying theory of **California's** definition of "resident" is that the state where the taxpayer maintains his closest connections is the state of his residence.. (Cal. Admin. Code, tit. 18, reg. 17014-17016(b),) The purpose of this definition is to define the class of individuals who should contribute to the support of the state because they receive substantial benefits and protection from its laws and government.

(Cal. Admin. Code, tit. 18, reg. 17014-17016(a).) Consistently with these regulations, we have held that the contacts which a taxpayer maintains in California and other states are important, objective indications of whether his presence in or absence from this state is for temporary or transitory purposes. (Appeal of David J. and Amanda Broadhurst, Cal. St. Bd. of Equal., April 5, 1976.)

Appellant contends that he was a nonresident because his employment in California was "tenuous and transitory." He alleges that the federal agency for **which** he worked was a temporary agency whose continued existence was at al? times uncertain. At the beginning of the period in question, however, appellant had already worked for the agency for over twelve years. It does not appear that his position at that time was any more insecure than that of other workers, who must always face the possibility of being fired, laid off or transferred. We therefore conclude that his **employ-ment** in California was permanent or indefinite within **the meaning** of the previously quoted regulation, an indication that his presence in California was for other than temporary or transitory purposes. (See Appeal of Paul Peringer, Cal. St. Bd. of Equal., Dec. 12, 1972.)

Appellant also contends that his closest connections were with Kansas. We disagree. Appellant was employed in California, and because of his job he spent over two-thirds of his time in this state during the appeal years. His wife lived here continuously. Moreover, the couple owned a house in California which apparently qualified for the homeowners' property tax exemption. Since this exemption does not extend to a

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"vacation or secondary home" (Rev. & Tax. Code, § 218), we assume that the California house was their principal place of abode. In addition, appellant and his wife maintained bank accounts in this state, they owned three automobiles registered in this state, and they each held a valid California driver's license. Despite their substantial contacts in Kansas, therefore, it appears that their **closest connections** were with California, a further indication that their presence here was for other than temporary or transitory purposes. (See Whittell v. Franchise Tax Board, 231 Cal. App. 2d 278 [41 Cal. Rptr. 673] (1964).)

Finally, appellant raises several contentions which may be answered summarily. First, the fact that appellant may have been considered a resident of Kansas under the laws of that state does not control our decision, since a person may have more than one residence for tax purposes. (Whittell v. Franchise Tax Board, supra, 231 Cal. App. 2d at 284.) Second, appellant's presence in California for less than nine months during some years does not create a presumption of nonresidence. (Appeal of Warren L. and Marlys A. Christianson, Cal. St. Bd. of Equal., July 31, 1972.) Third, the record in this case reveals no grounds for estoppel based either on statements allegedly made by one of respondent's employees (see Appeal of Tirzah M. G. Roosevelt, Cal. St. Bd. of Equal., May 19, 1954) or on the fact that respondent had accepted appellant's nonresident returns for prior years. (See Appeal of Duane H. Laude, Cal. St. Bd. of Equal., Oct. 6, 1976.)

For the reasons stated above, respondent's action in this matter must be sustained.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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IT IS **HEREBY** ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of **the** Revenue and Taxation Code, **that** the action of the Franchise Tax Board on the protests of George M. and Georgia M. Webster against proposed assessments of additional personal income tax in the amounts of \$755.13, \$585.26, **\$2,200.00** and **\$2,152.00** for the years 1970, 1971, 1972 and 1973, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this **10th** day of May, 1977, by the State Board of **Equalization**.

Shirley B. Smith, Chairman
Paul H. Davis, Member
George H. Fiebel, Member
Iris Sankley, Member
_____, Member

ATTEST: *DA DA Bell*, Executive Secretary